

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

Amendment to the Commission's Rules To)
Permit Flexible Offerings in the Commercial)
Mobile Radio Services)

WT Docket No. 96-6

To: The Commission

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REPLY COMMENTS OF 360° COMMUNICATIONS COMPANY

360° Communications Company ("360°")¹ hereby submits its reply to initial comments filed in response to the Further Notice of Proposed Rulemaking ("Further Notice") in the above-captioned proceeding.² As detailed below, 360° agrees with the majority of commenters that all interstate and intrastate services provided by Commercial Mobile Radio Service ("CMRS") licensees -- including all fixed offerings -- should be subject to the same federal regulatory framework as that of mobile CMRS offerings. This is consistent with the Commission's broad jurisdiction over CMRS services as well as with the public interest.

¹ 360° is the second largest publicly traded wireless company in the United States, providing wireless voice and data services to nearly 2 million customers in more than 100 markets across 16 states.

² Amendment of the Commission's Rules To Permit Flexible Service Offerings in the Commercial Mobile Radio Services, 11 F.C.C. Rcd 8965 (1996) (First Report and Order and Further Notice of Proposed Rulemaking).

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I. THE COMMUNICATIONS ACT GRANTS THE FCC JURISDICTION OVER ALL CMRS OFFERINGS, INCLUDING FIXED SERVICES

As asserted by many of the commenters, the Communications Act, as amended, grants the FCC plenary jurisdiction to regulate all CMRS services, including fixed and integrated CMRS offerings. By revising Section 332(c) of the Communications Act³ in 1993, Congress made clear its intent to subject CMRS to a “[f]ederal regulatory framework governing the offering of all commercial mobile service”⁴ by broadly preempting state regulation of these services. Various provisions of the Telecommunications Act of 1996 reaffirm this intent. Specifically, Sections 253(a) and (d) direct the Commission to preempt any state or local regulations that “may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service,”⁵ while Section 253(e) reaffirms the FCC’s preemption authority with respect to CMRS by explicitly preserving Section 332(c).⁶ Further, Section 153(44) specifically excludes CMRS providers from the definition of “local exchange carrier,”⁷ thus underscoring that, while CMRS providers may provide certain exchange or exchange access services, they should not be subject to the same regulatory requirements as LECs.

³ 47 U.S.C. § 332(c).

⁴ H.R. Rep. No. 213, 103rd Cong., 1st Sess. 490 (1993).

⁵ 47 U.S.C. § 253(a), (d).

⁶ 47 U.S.C. § 253(e).

⁷ 47 U.S.C. § 153(44).

Numerous commenters also agree that the definition of “commercial mobile service” in Section 332(d)⁸ and the definition of “mobile service” in Section 153(27),⁹ in conjunction with the Congressional goal of regulatory parity, require the Commission to regulate CMRS fixed offerings in the same manner as CMRS mobile offerings.¹⁰ The definition of “commercial mobile service” does not distinguish between fixed and mobile offerings. Moreover, the definition of “mobile service” was amended in 1993 expressly to include all offerings of Personal Communications Service licensees, thus incorporating fixed as well as mobile CMRS offerings within the mobile services classification. As pointed out by AirTouch Communications Inc., the legislative history of that amendment clearly “indicates that Congress considered the possibility of using wireless technology to provide fixed services and elected to permit such services to be included within the definition of mobile services.”¹¹ Although PCS is the only service specifically mentioned in the statute, principles of regulatory parity require extending this same treatment to providers of similar wireless services, such as cellular and paging licensees. For such reasons, there is ample statutory basis for according the FCC plenary jurisdiction over all CMRS offerings, including fixed services.¹²

⁸ 47 U.S.C. § 332(d).

⁹ 47 U.S.C. § 153(27).

¹⁰ See, e.g., Comments of Motorola, Inc. (“Motorola”) at 7-8; Comments of Personal Communications Industry Association (“PCIA”) at 10-11.

¹¹ Comments of AirTouch Communications, Inc. at 10.

¹² The National Association of Regulatory Commissioners (“NARUC”) expresses a contrary opinion, citing the exclusion of wireless services such as Basic Exchange Telephone Radio Systems (“BETRS”) from the classification of mobile services. Comments of NARUC at 3-4. However, BETRS is not provided over CMRS spectrum or under CMRS licenses.

II. PUBLIC INTEREST CONSIDERATIONS ALSO SUPPORT SIMILAR REGULATORY TREATMENT OF CMRS MOBILE AND FIXED OFFERINGS

In addition to the statutory support for consistent regulatory treatment of mobile, fixed and integrated CMRS services, public interest considerations also mandate that such offerings be subject to the same federal regulatory framework. As pointed out by numerous commenters in this proceeding, subjecting fixed CMRS offerings to inconsistent state regulation would seriously deter or delay the introduction of new and innovative services. As emphasized by Motorola,

[w]ithout consistent, federal regulation of fixed, mobile, and integrated CMRS offerings, the public interest benefits the Commission hopes to attain by allowing flexible use of CMRS spectrum are unlikely to be achieved. The prospect of having to comply with the regulatory requirements of numerous different states, or with uncertain and potentially inconsistent federal rules, will act as a strong deterrent to the offering of fixed wireless services.¹³

Similarly, exposing fixed services to state regulation is likely to adversely affect the ability of CMRS providers to integrate fixed and mobile offerings -- to the detriment of consumers.

360° also joins the many commenters who opposed the use of the rebuttable presumption review process proposed in the Further Notice. Such a process would significantly discourage the introduction of new fixed or integrated CMRS services. This proposed case-by-case review is overly burdensome and fact-specific. It will not only deplete

(...Continued)

Further, BETRS services do not compete with other CMRS services. Accordingly, BETRS' treatment as a non-mobile service is irrelevant to this analysis.

¹³ Comments of Motorola at 4.

the resources of the agency, but also be extremely costly to the CMRS licensee. It is quite foreseeable that some companies will use this review process to challenge the new services of their competitors, potentially delaying the service's introduction and certainly draining their rival's resources. Further, the uncertainty created by this process will make it impossible for CMRS licensees to predict potential costs and risks and thus discourage them from investing in and deploying new, publicly beneficial offerings that incorporate a fixed application.¹⁴

360° also believes that it would be premature at this time to adopt an alternative approach permitting states to regulate those fixed CMRS offerings that serve as a substitute for landline telephone exchange service for a substantial portion of the communications within a state. As underscored by PCIA in its comments, CMRS is not likely to reach this level of substitutability for quite a while, if ever.¹⁵ Accordingly, for at least the next several years, such regulation would be wholly unnecessary -- and thus contrary to recent efforts by Congress and the agency to eliminate unneeded regulation. Moreover, given the rapidly changing telecommunications marketplace, additional regulation of fixed services may never be warranted, even after such services might reach the requisite level of substitutability. The Commission should, therefore, refrain from making any such regulatory determination until the time fixed wireless services indeed become a substitute for landline services for a substantial portion of a state's communications.

¹⁴ For the same reasons, the case-by-case declaratory ruling approach advocated by Bell Atlantic Corporation, NYNEX Corporation and Bell Atlantic NYNEX Mobile Inc. in their joint comments is also unworkable.

¹⁵ Comments of PCIA at 13, 14.

III. CONCLUSION

For the foregoing reasons, 360° urges the Commission to subject all interstate and intrastate services provided by CMRS licensees -- including all fixed services -- to the same federal regulatory framework as that of mobile CMRS offerings. Such an approach is consistent with the Communications Act as well as with the public interest.

Respectfully submitted,

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